Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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87-1737

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA,

Respondent

versus

DAVID G. BUCKNO,

Petitioner

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF PENNSYLVANIA - EASTERN DISTRICT

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I. WHETHER OR NOT A CRIMINAL DEFENDANT WHO IS ILLEGALLY ARRESTED AND DETAINED AT GUNPOINT UPON A FALSE REPORT TO POLICE OFFICERS LAWFULLY, UNDER THE FIRST AND FOURTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, CAN BE CONVICTED OF DISORDERLY CONDUCT FOR YELLING "F---YOU" TO AN OFFICER IN A PARKING LOT IN THE MIDDLE OF THE NIGHT WHERE NO ONE ELSE WAS NEARBY?

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SUPREME COURT OF THE UNITED STATES

NO.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

versus

DAVID G. BUCKNO,
Petitioner

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, David G. Buckno, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, Eastern District.

OPINIONS BELOW

The Judgment and Order of the Supreme Court of Pennsylvania, Eastern District, rendered 2/25/88 is unrecorded and appears at page of the Appendix herein.

Judgment and Order of Superior Court of Pennsylvania rendered 9/15/86 is unrecorded and appears at page of Appendix herein.

The final judgment of the Supreme Court of Pennsylvania, Eastern District was dated 2/25/88 and the Petition for Writ of Certiorari is timely filed within sixty (60) days thereof. The jurisdiction of the Court rests upon 28 U.S.C. Section 1257(2), and Rule 17 of this Honorable Court.

FEDERAL PROVISIONS INVOLVED

First and Fourth Amendments of the United States Constitutions.

STATEMENT OF THE CASE

a. Procedural History of Case

Defendant/Petitioner herein was illegally arrested and detained at gunpoint upon a false report to police officers on February 19, 1983.

Following an appeal from a summary criminal conviction, Petition was found guilty of disorderly conduct by the Honorable Maxwell E. Davision on September 16, 1983.

Petitioner timely filed post-trial motions which were heard June 19, 1985 and denied on August 16, 1985. After sentencing, Petitioner timely appealed to the Superior Court of Pennsylvania .

On September 15, 1986, the Superior Court affirmed the judgment of sentence. Petitioner timely petitioned for allowance of appeal to the Pennsylvania Supreme Court which appeal was granted August 31, 1987.

After a hearing, the Supreme Court of Pennsylvania, Eastern District, dismissed

review of this Honorable Court.

b. Statement of The Facts

On February 19, 1983, Officer Higgins and Burns were notified over the radio that four white males committed an armed robbery. As the officers were proceeding to the scene of the robbery, they observed four men in a white vehicle under the Eighth Street underpass. The officers-in conjunction with 3, 4 or 5 police cruisers--proceeded to stop the four men at gunpoint because of the report of the robbery. All four men were compelled to exit the vehicle at gunpoint, and then spread against the vehicle and searched.

After the initial stop, the officers learned that the report was false, and that the real complaint was characterized by Officer Higgins as a "disorderly assault". The officers proceeded to obtain names and addresses from all four men, and at the point of the original stop, obtained names and addresses of all four men, and documentary

verification for three of them. The officers then made the four males return to the scene with them to confront the two female complainants.

At the scene and inside the apartment, the officer determined that there was no basis for arresting any of the males. Despite the fact that the officer determined that there was no reason to arrest the Defendant, and over the objection of Defendant, Officer Higgins decided that he was going to take Defendant to his home in the middle of the night to produce a driver's license:

> Q. Were you taking Mr. Buckno in the police van?
> A. I believe it was my partner--he was going to run him back to his house so he could produce identification and he said, 'I don't want the police taking me home.'
> Q. So, the officer was taking him into the vehicle?
> A. Not at the time. We were standing out there talking, and I believe, Officer Higgins was telling him that we were going to take him back to his home so he could produce some I.D."
>
> (N.T. 15,16)

The officer took Defendant, David Buckno,

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outside of the apartment unit, and arrested Defendant for Disorderly Conduct and Public Drunkeness after Defendant told him: "fuck you."

> "As we came to the truck, he told me that his mother recently was widowed, and I told him that I knew that, but I still needed verification of his address and name to make sure where he lived at, and he turned to me and pointed directly at me, and said, 'fuck you'. I told him that he was under arrest and we placed handcuffs on him and took him to headquarters. Mr. Buckno was arrested for disorderly conduct and public drunkeness."
>
> (N.T. 7)

At the trial, Defendant attempted to impeach the credibility of Officer Higgins by demonstrating he had preferential treatment for the females whom he conceded had committed the crime of false reports to law enforcement officials:

> "Q. Did you discuss the fact--did you have any discussion with the two women at the scene concerning the report of the robbery?
> A. If I may use the word, we gave the riot act, and asked how they came about making up that report."
>
> (N.T. 10)

The trial court, however, excluded evidence of bias against the Defendant on the part of the officer:

> "Q. Did you file any charges against either one of the women for filing a false report?
> MR. KANTRA: Objection.
> THE COURT: Objection Sustained."
>
> (N.T. 10)

The Pennsylvania Superior Court indicated that the exclusion of the evidence of bias was erroneous, but held that the exclusion was harmless error in that Defendant failed to demonstrate any prejudice by the exclusion.

The Commonwealth never introduced any testimony from the two complainants about what transpired that night between Defendant, Buckno and the two women. Defendant offered the following explanation:

> "Q. February 19, 1983 before 3:00 a.m., where were you?
> A. We were at the Windsor House, a bar in Fullerton.
> Q. And who were you with?
> A. I was with three of my friends and two of my friends had met these two young ladies.
> Q. And did you know their names?

Q. What happened next?
A. I didn't have a car, so I went with them, and I told the girl to drop me off at my house, that I didn't particularly want to go along. My father passed away and I wanted to get home. She said, 'No, you're going to our apartment.' We got there and after being there for about an hour or a half hour, I was insisting that I wanted to go home. She told me to just leave, but I couldn't. 'I'm miles away from my house,' I told her. I said 'I'm not leaving until my friends leave so they can take me home. Then she kept insisting that I leave, and I said, 'I can't, I'm not leaving.' She came after me and started scratching me on the neck. She started scratching me and I pushed her away to get her away from me and we left and we were stopped at the underpass by the police.

They had their guns out and I was scared to death. There was an officer and he called us fucking jercks and signaled me out of the--all four of us, out of the car and took us back to the apartment. First he talked to the girls in private and he didn't let me tell my side of the story at that time and that's when I really got angry and upset.

I was scared from having the gun pulled on us and they started taking me downstairs and walking me into the back of the van without telling me where they were taking me, and I said, 'Fuck you, what did I do?'

And that's when they put me in the van."

(N.T. 18,19)

This testimony was wholly uncontradicted.

Based upon these facts, the trial court on September 16, 1983 found Defendant "Guilty". Thereafter, Defendant timely filed post-trial motions. After argument, the Court issued an Order denying Defendant's post-trial motions and an appeal followed. The Superior Court of Pennsylvania affirmed. On August 31, 1987, Supreme Court of Pennsylvania granted Defendant's Petition for Allowance of Appeal, and later denied the appeal as improvidently granted. Petitioner submits this Petition For Writ Of Certiorari which is now before this Honorable Court for disposition.

FOR ALLOWANCE OF THE WRIT

Review by certiorari is appropriate in the case at bar under Rule 17(b) of the Rules of the United States Supreme Court in that the Pennsylvania Supreme Court, a court of last resort, has decided a Federal question in a way in conflict with the decision of another state court of last resort and of a federal court of appeals.

ARGUMENT

I. WHETHER OR NOT A CRIMINAL DEFENDANT WHO IS ILLEGALLY ARRESTED AND DETAINED AT GUNPOINT UPON A FALSE REPORT TO POLICE OFFICERS LAWFULLY, UNDER THE FIRST AND FOURTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, CAN BE CONVICTED OF DISORDERLY CONDUCT FOR YELLING "F---YOU" TO AN OFFICER IN A PARKING LOT IN THE MIDDLE OF THE NIGHT WHERE NO ONE ELSE WAS NEARBY?

1. The police officers illegally arrested Petitioner/Defendant in violation of his Fourth Amendment rights. The citation given to Defendant recited the nature of the offense as follows:

> "The actor was told several times to be quiet, stop yelling, using vulgar language, when told we needed I.D. told this officer 'fuck you.'"

The officer then proceeded to list all four subsections of Disorderly Conduct as the basis for the arrest.

Disorderly Conduct is defined by the Crimes Code, 55 P.S. Section 5503(a)(1)(4) as follows:

> "A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk therof, he:
> (1) engages in fighting or threatening, or in violent or tumultuous behavior;
> (2) makes unreasonable noise;
> (3) uses obscene language, or makes an obscene gesture; or
> (4) creates a hazardous or physically offensive condition by an act which serves no legitimate purpose of the actor."

Under the citation, the only provision applicable is 18 P.S. Section 5503(a)(3) concerning causing public inconvenience, annoyance or alarm by using obscene language. Petitioner cannot consistent with the U.S. Constitution, be convicted under the facts

of this case.

United States Constitution and Pennsylvania law are clear that the mere use of profane language at or near a public place where no one was present except the party to whom it was communicated does not constitute the offense of Disorderly Conduct. See, Commonwealth v. Sybert, 20 Dist. 88 (1910). To hold otherwise would be a constitutional impairment of the speaker's right of free speech guaranteed by the Pennsylvania Constitution and the First Amendment to the United States Constitution.

Conscious of this limitation, the Pennsylvania Supreme Court in Commonwealth v. Pringle, 304 Pa.Sup. 67, 450 A.2d 103 (1982) spelled out the limitations under which a police officer may arrest a person for hurling vulgar epithets at them:

> "It is evident that our Constitutional guarantees of freedom of speech forbid criminal punishment for the use of words or language except within certain limited classes. Gooding v. Wilson,

405 U.S. 518, 521-22, 92 S.Ct. 1103, 1106, 31 L.Ed.2d 408 413 (1972). In Chaplinsky v. New Hampshire, 315 U.S. 568, 571-2 62 S.Ct. 766, 769, 86 L.Ed. 1031, 1034-35 (1942), the Court clearly explained the types of speech which do not enjoy constitutional protection: 'Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words-those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. Cantwell v. Connecticut, 310 U.S. 296, 309, 310, 60 S.Ct. 900, 906, 84 L.Ed. 1213, 128 A.L.R. 1352."

* * *

Suffice it to state that it is well-settled in our Commonwealth that one may be convicted of disorderly conduct for engaging in the activity of shouting profane names and insults at police officers on a public street while the officers attempt to carry out their lawful duties."

304 Pa.Sup. at 67,68
450 A.2d at 105, 106

The crucial distinction made by the Pennsylvania Superior Court is that the policeman must be acting lawfully, and that the words must be "fighting words" which risk public inconvenience, annoyance or alarm. Neither is present in the case at bar.

At the point of the original stop--even before the officer took Defendant back to the girls who made the false report--the officer already determined Defendant's identity, and had already verified the identity of Defendant's three male companions. Additionally, the police officer had personal knowledge of Defendant's identity:

> "As we came to the truck, he told me that his mother recently was widowed, and I told him that I knew that..."
>
> (N.T. 7)

Despite this information, the police officer advised the Defendant that he intended to keep him in custody until he accompanied him home and saw written

verification of his I.D. Obviously, the continued custody of Defendant by the officer was an illegal arrest.

Street encounters between citizens and police officers are incredibly rich in diversity, and each encounter involving the legality of the original detention and any subsequent arrest must be viewed under its own unique facts and circumstances. Com. v. Mackie, 456 Pa. 372, 320 A.2d 842 (1974). Even without probable cause, the police can make an investigative activity insufficient to give the officers probable cause to arrest. Com. v. Benson, 239 Pa.Sup. 100, 361 A.2d 695 (1976); Com. v. Everett, 234 Pa.Sup. 249, 338 A.2d 662 (1975). Such a detention without probable cause must be limited to only a momentary intrusion into an individual's activities for the sole purpose of determining the identity of the suspect, Com. v. Everett, 234 Pa.Sup. 249, 338 A.2d 662 (1975); or for maintaining the status quo in order to enable the officer

to obtain additional information. Com. v. Murray, 406 Pa. 53, 331 A.2d 414 (1975); Com. v. Benson, supra.

Even without probable cause, the police officer must be able to point to specific and articulable facts which, taken together with the rational inferences from those facts, reasonably indicate suspicious activity which warrants further investigation of present criminal activity thereby justifying the limited intrusion into the individual's privacy, Com. v. Murray, supra; Com. v. Mackie, supra. Where there are no articulable facts indicating present involvement in criminal activity, an investigatory stop is unwarranted, and any evidence obtained as a result of such stop is tainted by the policeman's initial illegality. Com. v. Swanger, 453 Pa. 107, 307 A.2d 879 (1973); Com. v. Murray, supra; see, also Com. v. Boyer, 455 Pa. 283, 314 A.2d 317 (1974).

Hence, the police officer cannot now complain that, while he was acting illegally, the Defendant said to him, "Fuck you." Hence, Defendant's Petition For A Writ of Certiorari ought to be granted.

2. Defendant was illegally convicted of disorderly conduct despite undisputed evidence that the conduct complained of was Defendant's yelling a profanity at a police officer far from earshot of any other person. An indispensable ingredient of the offense of Disorderly Conduct is public annoyance or breach of peace. Gooding v. Wilson, supra. Where facts show that public was not annoyed by Defendant's conduct, summary conviction will be reversed on appeal. Com. v. Melchune 21 Luz. 268 (1921). Defendant must be found "not guilty" where there was no evidence that his vulgar language in any way distrubed or annoyed the peaceable residents nearby or in any way caused an annoyance to those on the public highway. Gooding v. Wilson, supra;

Chaplinsky v. New Hampshire, supra, Com. v. Brewer, 19 D&C 55, 80 Pitts. 450 (1932).

In the case at bar, there is no evidence that the public was in any way inconvenienced, annoyed or alarmed by the exchange between the officer and the Defendant. The incident occurred in a parking lot at about 3:15 A.M. without any indication that the public was aware of the incident. Not a shred of evidence, because none exists, was offered to show that the public was affected in any way whatsoever despite the claim by the Pennsylvania Superior Court to the contrary.

In the absence of any effect upon the public peace, therefore, Defendant had a constitutional right to protest his illegal detention by yelling "F...you" to the officer. Cantwell v. Connecticut, supra. The conviction contravenes well-established United States Constitutional law.

No evidence exists that Defendant's behavior in any way distrubed or annoyed peaceable residents nearby. The state, therefore, failed to meet its burden to sustain Defendant's conviction for Disorderly Conduct. Com. v. Greene, 410 Pa. 111, 189, A.2d 141 (1963). The Order denying and dismissing Defendant's post-trial motions ought to have been denied. Defendant's Petition For A Writ For Certiorari ought to be granted.

3. In allowing Defendant's conviction to stand, the Pennsylvania Supreme Court, a court of last resort, has decided a federal question in a way in conflict with the decisions of the United States Supreme Court. The line between speech unconditionally guaranteed and speech which may legitimately be regulated, suppressed or punished is finely drawn. Speiser v. Randall, 357 U.S. 513 525, 2 L.Ed.2d 1460, 1477, 78 S.Ct. 1332 (1958). However, this Honorable Court has

made it abundantly clear that State may not punish only spoken words, even though vulgar or offensive, when the words do not tend to incite an immediate breach of peace. See, Gooding v. Wilson, supra; Cohen v. California 403 U.S. 15, 18-22, 29 L.Ed.2d 284, 289-292, 91 S.Ct. 1780 (1971); Chaplinsky v. New Hampshire, supra.

In this case, the only offense even alleged by the Commonwealth of Pennsylvania is that Defendant directed a profanity at a police officer. No dispute exists that the single profanity occurred in the middle of the night, in the middle of a parking lot when no one else was nearby. Hence, the profanity constituted protected speech under First Amendment analysis.

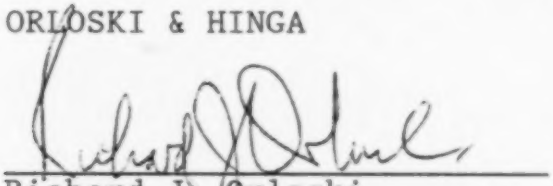
Defendant's profanity which was provoked by the police officer's conduct and uttered only within earshot of the provoking officer clearly does not constitute a clear and present danger to any substantial interest of the state as to render

Defendant liable to conviction therefor. See, Cantwell v. Connecticut, supra. Defendant's conviction here contravenes well-established United States Constitutional law and ought not be allowed to stand. Hence, Defendant's Petition For A Writ Of Certiorari ought to be granted.

CONCLUSION

For the foregoing reasons, the decision of the Supreme Court of Pennsylvania Eastern District, ought to be set aside and Defendant's conviction must be reversed.

ORLOSKI & HINGA



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SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA:		No. 114 E.D.
	:	Appeal Docket
vs.	:	1987
	:	
DAVID G. BUCKNO,	:	
Appellant	:	

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the appeal having been improvidently granted, the same is hereby dismissed.

/S/ Marlene F. Lachman, Esq.
Marlene F. Lachman, Esq.
Prothonotary

Dated: 2/25/88

[J-28-1988]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA Appellee v. DAVID G. BUCKNO Appellant	: No. 114 E.D. Appeal Docket 1987 : : Appeal from the Order of Superior Court entered September 15, 1986 at No. 2853 PHL 1985, affirming the Judgment of Sentence of the Court of Common Pleas of Lehigh County, Criminal Division, entered October 17, 1985 at No. 182-S of 1983 : : ___Pa.Super. ____, ___A.2d ____(1986) : : ARGUED: January 22, 1988

ORDER

PER CURIAM Filed: February 25, 1988

Appeal dismissed as having been improvidently granted.

Mr. Justice Zappala dissents and would reach the merits.

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

September 3, 1987

Richard J. Orloski, Esquire
1005 South Cedar Crest Boulevard
Allentown, Pennsylvania 18103

RE: Commonwealth of Pennsylvania v. David G. Buckno, Appellant
No. 114 E.D. APPEAL DOCKET 1987
(Formerly No. 952 E.D. Allocatur Docket 1986)

Dear Mr. Orloski:

This is to advise you that the following Order has been endorsed on your Petition For Allowance of Appeal, filed in the above-captioned matter:

"August 31, 1987.

Granted.
Per Curiam."

J. 42049/86

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DAVID G. BUCKNO, Appellant	:	NO. 2852 Phhiadelphia, 1985

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of LEHIGH County be, and the same is hereby AFFIRMED.

BY THE COURT:

/S/J. Haniel Henry
J. Haniel Henry
Prothonotary

DATED: September 15, 1986

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
vs.	:	
DAVID G. BUCKNO, Appellant	:	No. 2852 Philadelphia 1985

Appeal from the Judgment Of Sentence entered October 17, 1985, Court of Common Pleas, Lehigh County, Criminal Division at No. 182-S-1983.

BEFORE: MONTEMURO, JOHNSON and CERCONE, JJ.

MEMORANDUM:

Following an appeal from a summary criminal conviction, Appellant as found guilty of disorderly conduct by the Honorable Maxwell E. Davison, on September 16, 1983. Post-trial motions were filed on September 22, 1985. Argument on the post-trial motions was heard on June 19, 1985 and they were denied on August 16, 1985. On October 17, 1985 Appellant was sentenced to ninety (90) days probation, costs and a one hundred dollar ($100.00) fine. This appeal followed on October 25, 1985.

Appellant argues that he was illegally

detained or arrested and thus, he cannot be convicted of disorderly conduct for engaging in shouting profanity at a police officer because evidence of the use of profanity was tainted by the initial illegality. In addition, he argues that his use of profanity occurred late at night and did not disturb anyone, thus the element of public annoyance, included in the offense of disorderly conduct, is missing. Appellant also contends that the trial court erred as a matter of law in dismissing defendant's post-trial motions when the trial court excluded evidence of bias by the arresting officer against the defendant. We find case law to be contrary to Appellant's position and, accordingly, affirm the judgment of sentence.

The case of Commonwealth v. McKeirnan, ___Pa. Super. ___, 482 A.2d 7 (1985), appears to be dispositive. This Court, in McKeirnan held that even if the attempt by the policeman to make an arrest had been unlawful, the

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person being arrested could be prosecuted for subsequent illegal conduct. McKeirnan, supra at ___, 482 A.2d at 10. The McKeirnan case involves a charge of assault subsequent to the arrest, however, the analysis used in McKeirnan is equally applicable to a charge of disorderly conduct.

Appellant's argument that his use of profanity did not disturb or annoy anyone is meritless. First, he claims that he shouted once, late at night, in the middle of a deserted parking lot. The policeman, at trial, presented conflicting testimony that he was shouting loud and continuously in the apartment hallway and on the way out to the parking lot. The trier of fact is free to accept all, part, or none of the testimony of any witness. Commonwealth v. Owens, 315 Pa. Super. 400, 404, 462 A.2d 255, 257 (1983). Such findings of fact will not be overturned absent a showing of abuse of discretion. Here, Appellant does not allege an

abuse of discretion on behalf of the fact-finder. Second, for noise to constitute disorderly conduct it must be loud, boisterous, unseemly and that the public peace is unjustifiably broken or disturbed or the traveling public is annoyed. Commonwealth v. Greene, 410 Pa. 111, 119, 189 A.2d 141, 144 (1963) (emphasis added). Something is unseemly if it is not fitting or proper in respect to the conventional standards of organized society. Commonwealth v. Koch, 288 Pa. Super. 290, 431 A.2d 1052 (1981) (citing Green, supra). Given that the trier of fact is free to accept or reject the testimony of any witness, Owens, supra., it is clear from the policeman's testimony that the public peace was disturbed. Absent a vacant building, the shouting of profanity, which is unseemly, in the hallway of an apartment building is not only uncalled for, but also becomes more disturbing the later in the night it occurs.

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Appellant's assertion of bias is predi-
cated upon his illegal arrest by the police-
men and their failure to bring charges
against the women who filed the false report.
At trial, defense counsel asked one of the
arresting officers whether or not charges had
been filed against either one of the original
complainants who had telephoned a report of
a robbery in to police headquarters, leading
to Appellant's arrest. An objection to the
question was sustained.

For us to grant a new trial Appellant must demonstrate how the alleged error caused an incorrect result. Robinson v. City of Philadelphia, 329 Pa. Super. 139, 478 A.2d 1 (1984) (citing Nebel v. Mauk, 434 Pa. 315, 253 A.2d 249 (1969). This requirement follows because although exclusion of properly admissible evidence may be grounds for granting a new trial where the exclusion has prejudiced appellant, new trial will not be granted where the evidence

would not have affected the verdict. Kramer v. Janet Fleisher Gallery, Inc., 320 Pa. Super. 384, 467 A.2d 377 (1983).

While Appellant asserts, in a conclusory fashion, that the court's actions are reversible error, he fails to even attempt to demonstrate how this alleged error caused an incorrect result. Moreover, while evidence of the police officers failure to bring charges against the women may show favoritism towards the women, in no way is it related to whether Appellant did or did not engage in disorderly conduct.

Accordingly, we affirm the judgment of sentence. Judgment of sentence affirmed.

IN THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	No. 182-S
vs.	:	of 1983
DAVID G. BUCKNO,	:	
Defendant.	:	

ORDER

NOW, August 16, 1985, after argument, upon consideration of the briefs of counsel and for the reasons set forth in the accompanying opinion,

IT IS ORDERED that the defendant's post-trial motions are hereby denied and dismissed and the defendant is directed to appear for sentencing in Courtroom No. 2 on October 17, 1985, at 9:30 A.M.; the Lehigh County Probation Department to prepare a presentence investigation and report.

BY THE COURT:

/S/ Maxwell E. Davison
MAXWELL E. DAVISON, Judge

IN THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA : No. 182-S of

vs. : 1983

DAVID G. BUCKNO, :

Defendant. :

APPEARANCES:

EMIL W. KANTRA, II, ESQUIRE, ASSISTANCE DISTRICT ATTORNEY, with him WILLIAM H. PLATT, ESQUIRE, DISTRICT ATTORNEY on behalf of the Commonwealth,

MARGARET HINGA, ESQUIRE, with her, CALNAN & ORLOSKI, on behalf of the Defendant

* * *

OPINION

MAXWELL E. DAVISON, Judge

We have before us for dispostion, following the defendant's conviction of the summary offense of disorderly conduct

Section 5503(a)(3), 18 Pa C.S.A.; his post-trial motions seeking a new trial and in arrest of judgment alleging: (1) that one who has been allegedly illegally arrested or detained may not be prosecuted for disorderly conduct for yelling obscenities including "F___you" at the arresting officer; and (2) the arresting officer's alleged bias against the defendant was erroneously excluded. For the reasons herein, we deny the relief requested.

On or about 3:15 A.M., on February 19, 1983, allentown Patrolman Charles Higgins (Higgins) and his partner were investigating a reported robbery that, according to a radio broadcast from the communications center, had allegedly been perpetrated by four occupants of a white vehicle at 3041 Klein Street, Allentown, Lehigh County. Shortly

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[1]Act of December 6, 1972 P.L. 1482, No. 334, Section 1, 18 Pa. C.S.A. 5503, in pertinent part, provides:
(a) Offense defined.--A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:
(3) uses obscene language, or makes an obscene gesture;

thereafter, they observed and stopped a white vehicle with four occupants, one of which was the defendant, as it slid sideways through the Eighth Street underpass. While the stop was in progress, Higgins heard a second radio communication that retracted the robbery and reported an alleged disorderly assault at the same address. The officers along with the four occupants of the car proceeded to 3041 Klein Street, Allentown, to confront the complainants, two females, identified as Esther Lagler and Wanda Heffintrayer.

Higgins testified that one of the complainants stated that the four males had been at their apartment and were asked to leave when the defendant "had given them trouble." Higgins further testified that the defendant became very agitated and began acting unruly and shouted obscenities including "you f____bitches" at the women. At this point, Higgins asked the defendant to lower his voice and removed the defendant,

who continued to shout obscenities in the halls of the apartment complex to the parking lot. Once outside, the officer sought to verify the defendant's name and address and offered to take him home for this purpose.

It was at this juncture that the defendant turned to the officer, pointed at him and said "F___ you." The defendant was then placed under arrest for disorderly conduct.

The defendant argues that having been subjected to what he terms an illegal arrest for robbery he may not be prosecuted for disorderly conduct arising from obscenities directed at the arresting officer.

We conclude that the defendant's arrest for disorderly conduct was warranted. The uncontroverted testimony was that Higgins placed the defendant "under arrest" only after the defendant had shouted obscenities at the officer who had offered to take him home to verify the name and address he had given the officer.

It is well settled that one who shouts crude epithets, such as "F___ you" or "you f___ing pig", see Commonwealth v. Pringle , 304 Pa.Super. 67, 71, 450 A.2d 103, 105 (1982), directed pointedly at police officers, either during their investigation of alleged criminal activity or during the arrest (either legal or illegal)[2], is liable to prosecution for disorderly conduct. Commonwealth v. Crawford, No. 00272, PHL.83, slip op. at 2 (Pa.Super. Oct. 26, 1984);

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[2]An illegal arrest is not a bar to a subsequent prosecution nor does it prevent a valid conviction. United States v. Crews, 445 U.S. 463, 474, 100 s.Ct. 1244, 1251, 63 L.Ed.2d 537, 547 (1980); Gerstein v. Pugh, 420 U.S. 103, 119, 95 S.Ct. 854, 865, 43 L.Ed.2d 54, 68 (1975); Commonwealth v. Sudler, 496 Pa. 295, 304, 436 A.2d 1376, 1380 (1981); Commonwealth v. Krall, 452 Pa. 215, 219, 304 A.2d 488, 490 (1973); Commonwealth v. McKeirnon, 487 A.2d 7, 9 (1985).

Commonwealth v. Pringle, supra. The conduct described at trial supports the arrest for disorderly conduct.

Furthermore, we conclude that the challenge of bias on the part of the arresting officer because he did not similarly arrest the complainants for falsely reporting a robbery when, in fact, the officer made no arrests related to the alleged robbery, to be similarly wholly without merit and affirm the judgment of the trial court.

NOW, OCTOBER 17TH, 1985, the order of this Court in No. 182-S of 1983 is that you, David G. Buckno, pay the cost of prosecution; that you pay a fine in the sum of $100; and that you be placed on probation under the jurisdiction and supervision of the Lehigh County Probation Department for a period of 90 days; that you may be released following a conference with the Lehigh County Probation Officer.

Now, are you in a position to pay these monies today, Mr. Buckno?

THE DEFENDANT: Yes.

THE COURT: And upon payment of the costs of these proceedings.

MR. ORLOSKI: Your Honor, for the record, I think $68.50 already has been paid, I think, when he took the summary appeal.

THE COURT: Whatever additional costs there are plus the fine. By the Court.

sentenced you have certain rights and these include the right to appeal your matter further, if you wish, to a higher Court provided that you do so within 30 days. You have a right to appeal your summary convictions to the Superior Court of Pennsylvania. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: All right. Very well.

MR. CLARK: Thank you, your Honor.